

Code of Practice and Policy on Freedom of Speech

TYPE: Freedom of Speech Policy and Code of Practice

PURPOSE: This document outlines the College's policy on freedom of speech and expression

SCOPE: This policy applies to all staff, students, governors and visitors to the College

RESPONSIBILITY: Vice Principal HR & Student Services

LEGAL CONTEXT: Human Rights Act Article 10
Equality Act 2010
Education Act 1986
Higher Education and Research Act
The Counter Terrorism and Security Act 2015 'Prevent Duty'

RELEVANT POLICIES: Policy for Organising Events with External Speakers

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1. Policy Statement

- 1.1. This Code of Practice sets out Solihull College & University Centre's approach to freedom of speech for the benefit of College students and staff as long as the pursuance of such freedoms remains within the law, and within College policies and is not so extremely articulated as to incite riot, insurrection, racial hatred, harassment, criminal activities or other unacceptable activities. The principles of this policy and code of practice apply to speech in both written and verbal forms.

2. Reason For The Policy

There are a number of pieces of legislation that have relevance in relation to this code. The policy is informed in particular by the following key pieces of legislation:

2.1. Article 10 of the Human Rights Act 1998

Article 10 of the Human Rights Act states that everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

2.2. Equality Act 2010

The Equality Act and the Public Sector Equality Duty requires publicly funded educational institutions to have regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations. The College needs to consider whether any arrangements for freedom of speech and expression satisfy the provisions of the Equality Act. For example it may be unlawful to allow a member of a group whose views could be perceived to advocate discrimination to address students or staff on College grounds

2.3 Education Acts

Section 43 of the Education (No 2) Act 1986 states that every individual and body of persons concerned in the government of universities and colleges shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers.

This includes in particular the duty to ensure, so far as is reasonably practicable, that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected with:

- a) The beliefs or views of that individual or of any member of that body or
- b) the policy or objectives of that body.

The Act requires that the Corporation, with a view to facilitating the discharge of this duty, issue and keep up to date a code of practice setting out:

- c) The procedures to be followed by members, students and employees of the establishment in connection with the organisation:
 - i) of meetings which are to be held on premises of the establishment and which fall within any class of meeting specified in the code; and
 - ii) of other activities which are to take place on those premises and which fall within any class of activity so specified; and
- d) the conduct required of such persons in connection with any such meeting or activity.

Additionally, the Act states that every individual and body of persons concerned in the government of the College shall take such steps as are reasonably practicable (including where appropriate the initiation of disciplinary measures) to secure that the requirements of the code of practice for the College are complied with.

The Higher Education and Research Act 2017 extended section 43 of the 1986 Act to include any registered higher education provider in England. The Office for Students (OfS) regulatory framework (2018) sets out the initial and ongoing conditions which higher education providers need to satisfy in order to be registered with the OfS. One such condition for registration requires the provider to have in place adequate and effective management and governance arrangements to deliver, in practice, the public interest governance principles that are applicable to it. Amongst the public interest governance principles are that the governing body takes such steps as are reasonably practicable to ensure that freedom of speech within the law is secured within the provider and that academic staff at an English higher education provider have freedom within the law to question and test received wisdom and to put forward new ideas and controversial or unpopular opinion without placing themselves in jeopardy of losing their jobs or privileges they may have at the provider.

2.4 Prevent Duty

The Counter Terrorism and Security Act 2015 means the College must “have due regard to the need to prevent people from being drawn into terrorism” (Section 26). The College must also “have particular regard to the duty to ensure freedom of speech” and “to the importance of academic freedom” (Section 31). Under Section 29, we must “have regard to any such guidance in carrying out that duty.”

The College is complying with this duty in all its aspects, which in practice means striking a fine balance between concerns around extremism and concerns around censorship. The work in promoting British values and the College’s values and its Equality Policy all aim to positively address this challenge. It covers many areas of activity, including pastoral support for students, staff training, information sharing and assessing speakers for events. In the assessment of speakers for events the College will have due regard to the Governments list of terrorist groups or organisations banned under UK law and details of proscription criteria.

2.5 Charity Law

Although the College is exempt from registration with the Charity Commission, it is nevertheless subject to Charity law and our compliance with charity law will be monitored by the Office for Students and Department for Education, acting through the Education and Skills Funding Agency. The College is required to manage the risk of criminal conduct, including terrorism or inciting racial or religious hatred, comply with civil law obligations, such as the Equality Act 2010, satisfy the ‘public benefit requirement’ and manage its resource responsibly.

3. Policy Objectives

The College supports the principle of freedom of speech and expression within the law as one of its fundamental principles. It also has regard to the need to ensure that students and staff have freedom to question, test and to put forward new ideas and controversial or unpopular opinions, without placing themselves at any risk. Every person employed at the College and every student enrolling at the College should be aware that joining the College community involves obligations and responsibilities, which are consistent with the above principle and the law.

4. Policy on Freedom of Speech

4.1 This Code of Practice sets out the rights and obligations inherent in supporting the principle of freedom of speech and expression within the law. The Code's obligations and rights apply to:

- a) the College (which includes all bodies or persons having authority to determine any matter relevant to this Code);
- b) all governors and staff and volunteers.
- c) all students.
- d) the Students' Executive Committee and its constituent societies, clubs and associations.
- e) any visiting or guest speakers
- f) any alumnus invited by the College.
- g) all contractors and commissioned services,
- h) any person or organisation wishing to hire premises controlled by the College for an event.

In relation to the holding of any events on premises, the Code's rights shall also apply to persons invited or otherwise lawfully on the premises for the purposes of the event; and

- j) persons who, if it were not for the provisions of this Code, would have been invited to the event.

4.2 Nothing in this Code will affect the rights of any person taking any steps pursuant to lawful industrial action.

4.3 Subject to clause 4.1, those who are under a duty to observe and uphold the principle of freedom of speech within the College shall do so at all times.

Academic Freedom

4.4 The principle of freedom of speech set out in this Code shall extend to the performance by all staff of their duties and responsibilities and to any visiting or guest lecturer invited by the College. It shall also extend to students presenting or exhibiting work produced.

4.5 Any person or body to which this Code applies shall not take any action (other than by reasonable and peaceful persuasion) to prevent the holding or continuation of any lecture, tutorial, exhibition, or other academic activity because of the views held or expressed or which are reasonably likely to be expressed, (whether or not within the College) by the lecturer or tutor or student concerned, except as provided for in paragraph 4.3.

4.6 Any person or body to whom this Code applies shall not take any action (other than

reasonable and peaceful persuasion) to prevent any student or group of students from attending any academic activity required by, or properly associated with, the course for which they are enrolled because of the views or beliefs held or lawfully expressed (whether or not within the College) by that student or because of the reasonable likelihood that such views will be expressed.

Events

- 4.7 Where any person or body subject to the obligations of this Code wishes to hold any event for the expression of any views or beliefs held or lawfully expressed on premises controlled by the College, consent shall not be unreasonably refused.
- 4.8 Save for the provisions in paragraph 4.9, it shall not be a reasonable ground of refusal of permission or facilities for any event that the views likely to be expressed there may be controversial or contrary to any policy of the College, Central or Local Government, provided that the expression of such views is lawful. Expression of opinions which are annoying, offensive, in bad taste, or ill-mannered is not automatically unlawful and should not be the sole ground for refusal unless this would result in the College failing in its wider legal duties (for example, to promote equality of opportunity and good relations between persons of different racial groups). The fact that disorder may result at any event is not of itself a ground for refusal of permission or facilities unless the creation of such disorder is the intention of the organisers of, or speakers at, any such event or public safety and order might be jeopardised.
- 4.9 It shall be accepted as reasonable to refuse consent, or withhold facilities for any event to which this Code applies where the College reasonably believes (from the nature of the speakers or from similar events in the past whether held at the College or otherwise) that:
- a) the views likely to be expressed by any speaker are contrary to the law;
 - b) the intention of any speaker is likely to be to incite breaches of the law or is to intend breaches of the peace to occur;
 - c) the views likely to be expressed by any speaker are for the promotion of any illegal organisation or purpose;
 - d) the views likely to be expressed by any speaker are for the promotion of any organisation subject to the College's "No Platform" policy as amended from time to time;
 - e) it is in the interests of public safety, the prevention of disorder or crime or the protection of those persons lawfully on premises under the control of the College, that the event does not take place.
 - f) the views of any speaker are widely known and published and do not align with the values of the College, regardless of focus of the event in question.
- 4.10 Subject to paragraphs 4.26 and 4.28, where the College is reasonably satisfied that the otherwise lawful expression of views at any event is likely to give rise to disorder, the College shall consider what steps it is necessary to take to ensure:
- a) the safety of all persons,
 - b) the maintenance of law and order; and
 - c) the security of premises.
- 4.11 The College may impose such conditions and requirements upon the organisers as are reasonably necessary in all the circumstances. These may include, but are not limited to, requirements as to provision of stewards, variation of location and time, and whether the event shall be open to the public at large.
- 4.12 Where the College concludes that imposing conditions would not be sufficient to

prevent serious disorder within premises subject to their control, it may decline to permit such events to be held. Before doing so, however, the College will generally consult the police with a view to establishing whether the serious disorder can be prevented or otherwise dealt with appropriately by attendance of police officers or alternative conditions.

- 4.13 Where any person or body to whom this Code applies is engaged in the organisation of any event on College premises at which it is reasonably suspected that disorder is likely to occur, the organiser shall normally give the Vice Principal HR & Student Services not less than 28 days' notice in writing of such a proposed event. The Vice Principal shall inform the person or body organising the event in writing within seven days of the date of the notice whether the meeting may go ahead.
- 4.14 Any person or body wishing to hold an event on College premises must comply with the provisions of this code and with the College's Policy on Organising Events for External Speakers.
- 4.15 All event organisers shall ensure proper security and organisation (including stewarding and chairing) of the event for the purpose of protecting the right of freedom of speech. Whilst the heckling of speakers is a right not to be disturbed, it shall be contrary to the Code to seek, by systematic or organised heckling or disruption of such activity, to prevent the lawful expression of views.
- 4.16 It shall be contrary to this Code for any person or body subject to the Code to organise, engage in or become associated with, any conduct with the intention of preventing (other than by reasonable and peaceful persuasion) any event subject to this Code from being held or from continuing.
- 4.17 The organisers of the event shall have a duty so far as is reasonably practicable to ensure that both the audience and the speaker act in accordance with the law during the event. In the case of unlawful conduct, the event organiser shall give appropriate warnings and, in the case of continuing misconduct, the event organiser shall require the withdrawal or removal by the stewards or if necessary by the police of the person(s) concerned.
- 4.18 It shall be the responsibility of the organisers of the event to ensure that no articles or objects shall be taken inside the venue where the event is being held in circumstances, which are likely to lead to injury, damage or breach of the law.

No Platform Policy

- 4.19 The College will offer no platform to those who are intolerant of the free speech of others both generally and where it includes the denial of the right to hold or express an opposing opinion. This also includes those who engage in the active prevention of permitting others to speak, such as the interruption - violent or otherwise - of meetings (see 4.3 f)). Those who offer no platform to others, without any reasonable or justifiable basis for doing so, should not benefit from the freedom to speak at the College.
- 4.20 The College will offer no platform to those who advocate or engage in violence in the furtherance of their political, religious, and philosophical and/or other beliefs.
- 4.21 The College will offer no platform to those who hold and disseminate views which are repugnant to the maintenance of liberty under the rule of law in the UK or who advocate or engage in the violent overthrow of democracy in the UK or elsewhere.

- 4.22 The College reserves to itself the right to debar speakers or organisations from the College where the College reasonably believes that their presence on College property is not conducive to the good order of the College, or where it would offend the principles of scholarly inquiry, or where it would put at risk the safety of students, staff or the general public. The College further reserves the right to list the names of individuals or groups which it debars either under this general reserved right or in accordance with the principles above.
- 4.23 The College will maintain a list of organisations considered to be within the scope of the provisions in 4.20-4.22. Any amendments made to the list from time to time by the College shall be deemed as included, or excluded as appropriate with effect from the date that the amendment is made.

General

- 4.24 Any breach of the provisions of this Code by staff, students or governors will be addressed under the applicable Disciplinary Procedure.
- 4.25 It shall be the duty of all those subject to the Code to assist the College in upholding the rights of freedom of speech set out in this Code.
- 4.26 Where a breach of this Code occurs, it shall be a duty of all to whom this Code applies to take all reasonable steps to secure the identification of persons involved in that breach.

Where breaches of the criminal law occur, the College shall, where appropriate, assist the Police and the Crown Prosecution Service. In respect of any criminal charges, the College, shall not, unless the Principal determines otherwise, proceed with any disciplinary proceedings in respect of the same matters, until the conclusion on any ongoing criminal proceedings.

- 4.27 The operation of the Code shall be monitored by the College's Senior Leadership Team.

Review

Section 43(3) of the Education (No.2) Act 1986 requires that the Corporation shall issue, and keep up to date, a Code of Practice on Freedom of Speech. In order to comply with this duty, the Corporation will review biannually, the code and its operation.

5. Definitions

By 'speaker' this Code means any organiser or other person invited to address the meeting other than members of any audience at that meeting.